

1 HANSON BRIDGETT LLP
KURT A. FRANKLIN, SBN 172715
2 kfranklin@hansonbridgett.com
LISA M. POOLEY, SBN 168737
3 lpooley@hansonbridgett.com
SAMANTHA WOLFF, SBN 240280
4 swolff@hansonbridgett.com
425 Market Street, 26th Floor
5 San Francisco, California 94105
Telephone: (415) 777-3200
6 Facsimile: (415) 541-9366

7 HANSON BRIDGETT LLP
TYSON M. SHOWER, SBN 190375
8 tshower@hansonbridgett.com
LANDON D. BAILEY, SBN 240236
9 lbailey@hansonbridgett.com
500 Capitol Mall, Suite 1500
10 Sacramento, California 95814
Telephone: (916) 442-3333
11 Facsimile: (916) 442-2348

12 OTTEN LAW, PC
VICTOR OTTEN, SBN 165800
13 vic@ottenlawpc.com
KAVITA TEKCHANDANI, SBN 234873
14 kavita@ottenlawpc.com
3620 Pacific Coast Highway, #100
15 Torrance, California 90505
Telephone: (310) 378-8533
16 Facsimile: (310) 347-4225

17 Attorneys for Plaintiffs
CORY SPENCER, DIANA MILENA
18 REED, and COASTAL PROTECTION
RANGERS, INC.
19

20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
22

23 CORY SPENCER, an individual;
24 DIANA MILENA REED, an
individual; and COASTAL
25 PROTECTION RANGERS, INC., a
26 California non-profit public benefit
corporation,
27

28 Plaintiffs,

CASE NO. 2:16-cv-02129-SJO (RAOx)

**PLAINTIFFS' STATEMENT OF
GENUINE DISPUTES OF MATERIAL
FACT IN OPPOSITION TO
DEFENDANT FRANK FERRARA'S
MOTION FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION**

Case No. 2:16-cv-02129-SJO (RAOx)

PLTFS.' STMT. OF GENUINE DISPUTES OF MATERIAL FACT IN OPP. TO DEFT. FRANK FERRARA MOT.
FOR SUMM. JUDGMENT OR, IN THE ALT., SUMM. ADJUD.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

v.

LUNADA BAY BOYS; THE INDIVIDUAL MEMBERS OF THE LUNADA BAY BOYS, including but not limited to SANG LEE, BRANT BLAKEMAN, ALAN JOHNSTON AKA JALIAN JOHNSTON, MICHAEL RAE PAPAYANS, ANGELO FERRARA, FRANK FERRARA, CHARLIE FERRARA, and N. F.; CITY OF PALOS VERDES ESTATES; CHIEF OF POLICE JEFF KEPLEY, in his representative capacity; and DOES 1-10,

Defendants.

Judge: Hon. S. James Otero
Date: September 5, 2017
Time: 10:00 a.m.
Crtrm.: 10C

Complaint Filed: March 29, 2016
Trial Date: November 7, 2017

Plaintiffs Cory Spencer, Diana Milena Reed, and Coastal Protection Rangers, Inc. ("Plaintiffs") hereby respectfully submit the following Statement of Genuine Disputes of Material Fact in Opposition to Defendant Frank Ferrara's ("Defendant") Motion for Summary Judgment or, in the Alternative, Summary Adjudication.

ISSUE 1: Defendant is entitled to Summary Judgment on all of Plaintiff's claims, including Bane Act, Public Nuisance, Assault, Battery, and Negligence, as Plaintiffs' claims are without merit.

Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
1. Frank Ferrara is the father of Defendant Charlie Ferrara. Declaration of Tiffany Bacon ("Bacon Decl."), Ex. L (hereinafter "F. Ferrara Dep.") at 22:21-23:2.	1. Undisputed.

1 2	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
3 4 5 6 7 8 9	2. Frank Ferrara is the brother of Defendant Angelo Ferrara and the uncle of Defendant N.F. and non-party Leo Ferrara. F. Ferrara Dep. at 21:23-21:25; Bacon Decl., Ex. R (hereinafter C. Ferrara Dep.”) at 18:2-18:19.	2. Disputed in part. N.F. is no longer a Defendant to this action.
10 11 12 13 14 15 16 17 18	3. Frank Ferrara has never met or come into contact with Plaintiff Spencer or Plaintiff Reed. F. Ferrara Dep. at 213:9-213:20.	3. Disputed. The evidence cited does not support the fact stated. Defendant simply testified that he had never met "or been near" Plaintiff Spencer or Plaintiff Reed. The testimony does not establish that he never had contact, whether physical or verbal, with either individual Plaintiff. (Bacon Decl., Ex. R, 213:9-213:20.)
19 20 21 22 23	4. Prior to January of 2016, Plaintiff Spencer never surfed at Lunada Bay. Bacon Decl., Ex. M (hereinafter “Spencer Dep.”) at 62:15-62:22.	4. Undisputed.
24 25 26 27 28	5. Plaintiff Spencer is unable to distinguish one member of the Ferrara family from the next. Spencer Dep. at 219:9-219:20.	5. Undisputed.

<p>1 Defendants' Statement of 2 Uncontroverted Facts and Evidence 3 in Support</p>	<p>Plaintiffs' Response in Opposition</p>
<p>3 6. Plaintiff Spencer has never 4 interacted with Frank Ferrara. 5 6 Bacon Decl., Ex. M and Q; RJN, Ex. H. 7 8 9 10 11 12 13</p>	<p>6. Disputed. Defendant has not cited to any specific evidence supporting this asserted fact. Instead, in violation of this Court's Standing Order, Defendant improperly cites to the entire deposition of Plaintiff Spencer, six (6) entire sets of Plaintiffs' discovery responses, and the entire declaration of Plaintiff Spencer in support of the Plaintiffs' motion for class certification.</p>
<p>14 7. Plaintiff Reed never surfed at 15 Lunada Bay prior to January 2016. 16 17 Bacon Decl., Ex. N (hereinafter "Reed 18 Dep.") at 104:7-105:6.</p>	<p>7. Undisputed.</p>
<p>19 8. Plaintiff Reed has never 20 interacted with Frank Ferrara. 21 22 Bacon Decl., Ex. N and Q; RJN, Ex. I. 23 24 25 26 27 28</p>	<p>8. Disputed. Defendant has not cited to any specific evidence supporting this asserted fact. Instead, in violation of the Court's Standing Order, Defendant improperly cites to the entire transcript of Plaintiff Reed's deposition, six (6) entire sets of discovery responses, and Plaintiff Reed's entire declaration in support of Plaintiffs' motion for class certification.</p>

<p>1 Defendants' Statement of 2 Uncontroverted Facts and Evidence 3 in Support</p>	<p>Plaintiffs' Response in Opposition</p>
<p>4 9. With respect to members of the 5 Ferrara family, Ken Claypool has only 6 interacted with Frank Ferrara, Senior 7 (the father of Moving Party Frank 8 Ferrara) and Defendant Angelo Ferrara. 9 Bacon Decl., Ex. O (“Claypool Dep.”) 10 at 50:16-51:16.</p>	<p>9. Disputed. The evidence cited does not support the stated fact. The cited testimony does not relate to Mr. Claypool's "interactions" with the Ferrara family. (Bacon Dec., Ex. O, 50:16-51:16.)</p>
<p>11 10. Mr. Claypool did not identify 12 Moving Party Frank Ferrara as one of 13 the “Lunada Bay Boys.” 14 Claypool Dep. at 88:3-88:7.</p>	<p>10. Disputed. The cited evidence reflects that Mr. Claypool would not classify Frank Ferrara, Senior, as one of the Lunada Bay Boys. (Bacon Dec., Ex. P, 88:3-5.)</p>
<p>16 11. Jim Russi has no knowledge of 17 Frank Ferrara engaging in any 18 wrongful conduct at or near Lunada 19 Bay nor Frank Ferrara being involved 20 in any illegal activity at or near 21 Lunada Bay. 22 23 Bacon Decl., Ex. P (hereinafter 24 “Russi Decl.”.)</p>	<p>11. Undisputed, but immaterial. Mr. Russi has lived in Hawaii since 1979. (Bacon Dec., Ex. P, ¶ 2.)</p>
<p>25 12. Plaintiffs have not provided a 26 single discovery response tying any 27 action or inaction of Frank Ferrara to 28 any of the Plaintiffs’ claimed damages</p>	<p>12. Disputed. Further, this statement is argument, not fact, and the cited evidence does not support the statement. For example, Plaintiff Reed</p>

1 2	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
3 4 5 6 7 8 9 10 11 12 13 14 15	<p>in this case.</p> <p>Bacon Decl., Ex. Q.</p>	<p>provided a discovery response explaining that the hostile conduct directed towards the Plaintiffs at Lunada Bay is part of an agreement between Defendant Ferrara and the other Bay Boys. (Bacon Decl., Ex. Q, 9:15-19.) Further, Plaintiff Spencer provided a discovery response that quoted Defendant Ferrara describing himself as "a protector of Palos Verdes" in a December 1991 article in Surfer Magazine. (Bacon Decl., Ex. Q, 10:1-27.)</p>
16 17 18 19 20 21 22 23 24 25 26 27 28	<p>13. Defendant Sang Lee has never had any communications with Frank Ferrara about how to behave at Lunada Bay, or any communications about preventing people from visiting Lunada Bay, or any communications about preventing persons from surfing Lunada Bay.</p> <p>Bacon Decl., Ex. S ("Lee Dep.") at 294:14-295:5; F. Ferrara Dep. at 275:16-276:23.</p>	<p>13. Disputed. Although Defendant Sang Lee denied that he had any communications with Defendant Frank Ferrara about how to behave at Lunada Bay or communications about preventing persons from surfing at Lunada Bay, Plaintiff Spencer testified to his belief that Defendant Sang Lee participated in a coordinated effort in which members of the Bay Boys, including Defendant Frank Ferrara, would communicate by cell phone and</p>

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3		sometimes walkie-talkies to hassle
4		people in the water. (Bacon Decl., Ex.
5		M, 308:18-25; 309:1-3; 312:13-25;
6		313:1.) The cited evidence further
7		establishes that Defendant Frank
8		Ferrara has communicated with
9		Defendant Sang Lee via cell phone
10		before. (Bacon Decl., Ex. L at 276:4-
11		8.) Further, Defendant Sang Lee
12		testified that he was “brought up this
13		way” by the “older boys,” including
14		Frank Ferrara. Sang Lee Depo.
15		113:20-126:7.
16	14. Defendant Sang Lee has never	14. Undisputed, to the extent this is
17	witnessed Frank Ferrara attempting to	how Sang Lee testified during his
18	prevent any person from visiting or	deposition.
19	surfing Lunada Bay.	
20		
21	Lee Dep. at 295:20-295:25.	

ISSUE 2: Defendant is entitled to Partial Summary Judgment on Plaintiff’s First Cause of Action for Bane Act, as Plaintiffs’ claim is without merit.

25	Frank Ferrara incorporates	Plaintiffs incorporate their response to
26	Uncontroverted Facts and Conclusions	Defendant Frank Ferrara’s
27	of Law Nos. 1 through 14 by this	Uncontroverted Facts and Conclusions
28		

<p>1 reference as though fully set forth 2 herein.</p>	<p>of Law Nos. 1 through 14 by reference as though fully set forth herein.</p>
--	--

3
4 **ISSUE 3:** Defendant is entitled to Partial Summary Judgment Plaintiffs’
5 Second Cause of Action for Public Nuisance as Plaintiffs’ claim is without merit.

<p>6 Frank Ferrara incorporates 7 Uncontroverted Facts and Conclusions 8 of Law Nos. 1 through 14 by this 9 reference as though fully set forth 10 herein.</p>	<p>Plaintiffs incorporate their response to Defendant Frank Ferrara’s Uncontroverted Facts and Conclusions of Law Nos. 1 through 14 by reference as though fully set forth herein.</p>
--	--

11
12 **ISSUE 4:** Defendant is entitled to Partial Summary Judgment on Plaintiff’s
13 Sixth Cause of Action for Assault as Plaintiffs’ claim is without merit.

<p>14 Frank Ferrara incorporates 15 Uncontroverted Facts and Conclusions 16 of Law Nos. 1 through 14 by this 17 reference as though fully set forth 18 herein.</p>	<p>Plaintiffs incorporate their response to Defendant Frank Ferrara’s Uncontroverted Facts and Conclusions of Law Nos. 1 through 14 by reference as though fully set forth herein.</p>
--	--

19
20 **ISSUE 5:** Defendant is entitled to Partial Summary Judgment on Plaintiffs’
21 Seventh Cause of Action for Battery as Plaintiffs’ claim is without merit.

<p>22 Frank Ferrara incorporates 23 Uncontroverted Facts and Conclusions 24 of Law Nos. 1 through 14 by this 25 reference as though fully set forth 26 herein.</p>	<p>Plaintiffs incorporate their response to Defendant Frank Ferrara’s Uncontroverted Facts and Conclusions of Law Nos. 1 through 14 by reference as though fully set forth herein.</p>
--	--

27
28

1 DATED: August 7, 2017

HANSON BRIDGETT LLP

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: /s/ Samantha Wolff
KURT A. FRANKLIN
LISA M. POOLEY
SAMANTHA D. WOLFF
TYSON M. SHOWER
LONDON D. BAILEY
Attorneys for Plaintiffs
CORY SPENCER, DIANA MILENA
REED, and COASTAL PROTECTION
RANGERS, INC.